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17 and SAN DIEGO GAS & ELECTRIC COMPANY

18 UNITED STATES OF AMERICA
19 NUCLEAR REGULATORY COMMISSION
20 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

21 In the Matter of)
22)
23 SOUTHERN CALIFORNIA EDISON)
24 COMPANY, et al. (San Onofre)
25 Nuclear Generating Station,)
26 Units 2 and 3).)

8-11-80
DOCKET
USNR
AUG 15 1980
Office of the
Recording Clerk
Branch

Docket Nos. 50-361 OL
50-362 OL

APPLICANTS' BRIEF RE
APPROPRIATE DISCOVERY
TIMETABLE.

27 TO: THE ATOMIC SAFETY AND LICENSING BOARD, THE PARTIES, AND
28 THEIR COUNSEL OR RECORD HEREIN:

29 Pursuant to the agreement between the parties on the
30 record at the Prehearing Conference herein, July 17, 1980 (T.R.
31 271), SOUTHERN CALIFORNIA EDISON COMPANY and SAN DIEGO GAS &
32 ELECTRIC COMPANY (hereinafter "Applicants") hereby submit their
33 brief regarding an appropriate discovery timetable in response to
34 the memorandum on this subject (hereinafter "FOE Memorandum"),
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1 dated July 28, 1980, filed herein by counsel for Intervenor
2 Friends of the Earth, et. al. (hereinafter "FOE").

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4 I.

5 DISCOVERY BACKGROUND

6 On or about March 22, 1977, Applicants filed their
7 application for full term operating licenses (hereinafter "FTOL")
8 for San Onofre Nuclear Generating Station, Units 2 and 3
9 (hereinafter "SONGS"). On April 7, 1977, notice of filing that
10 application was published in the Federal Register, 42 Fed. Reg.
11 18460. Pursuant to said notice, various petitions to intervene
12 were filed and subsequently allowed. On May 12, 1977, an Atomic
13 Safety and Licensing Board (hereinafter the "Board") was
14 established and, on December 6, 1977, a special prehearing
15 conference was held pursuant to 10 C.F.R. § 2.751a.

16 By Memorandum and Order of January 27, 1978, the Board
17 determined that certain contentions alleged by FOE and Intervenor
18 Groups United Against Radiation Dangers (hereinafter "GUARD")
19 were suitable for discovery purposes. The Board allowed
20 contentions on emergency planning, geology/seismology, the
21 effects of certain site dewatering well cavities, and the
22 escalation of uranium prices.

23 The Board's Order of January 27, 1978 permitted
24 discovery on all contentions to commence. Since that Order, the
25 following discovery has been accomplished by the parties:

26 (1) NRC Staff Interrogatories and Request for Documents
27 to GUARD - Set No. 1 (June 24, 1978), and GUARD's responses
28 thereto (October 17, 1978);

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29

1 (2) NRC Staff Interrogatories and Request for Documents
2 to FOE - Set No. 1 (June 23, 1978), and FOE's responses thereto
3 (July 28, 1978);

4 (3) FOE's Interrogatories to Southern California Edison
5 Company (June 26, 1978), and Southern California Edison Company's
6 responses thereto (July 17, 1978);

7 (4) Applicant's First Set of Interrogatories to FOE
8 (June 28, 1978), and FOE's responses thereto (July 26, 1978);

9 (5) Applicants' First Set of Interrogatories to GUARD
10 (June 28, 1978), and GUARD's responses thereto (August 18, 1978);

11 (6) Deposition of Ron Carstens (February 28, 1979);

12 (7) FOE request for Documents to Southern California
13 Edison Company (May 22, 1979), and Southern California Edison
14 Company's response thereto (June 19, 1979);

15 (8) FOE's Interrogatories to Southern California Edison
16 (October 18, 1979), and Southern California Edison Company's
17 responses thereto (December 3, 1979); and

18 (9) FOE's Interrogatories to Southern California Edison
19 Company's responses thereto (March 18, 1980).

20 As of this date, there are no outstanding requests for
21 further discovery, nor are there any pending motions to compel
22 further discovery on prior discovery requests.

23 Intervenors FOE and GUARD have had over two and one-
24 half years within which to pursue discovery.

25 II.

26 DISCOVERY MUST BE TERMINATED
27 TO ALLOW TIMELY ISSUANCE OF AN
28 OPERATING LICENSE.

Applicants have estimated that construction of SONGS

1 Unit 2 will be completed and the unit will be ready for fuel
2 loading April 15, 1981. The NRC Staff has projected a period
3 which brackets Applicants' dates for completion of construction
4 and fuel loading. The NRC Staff does not disagree with
5 Applicants' projected date. (Tr. 184.) In order to accomplish
6 the hearing process, it is clearly necessary to establish a
7 discovery timetable that will allow for hearings and timely
8 issuance of a license.

9
10 Applicants are concerned that in the present licensing
11 environment an FTOL cannot be achieved in a time frame consistent
12 with the scheduled completion of construction. The chance for
13 delay in achieving operation of SONGS, Unit 2, may be minimized
14 by obtaining a fuel loading and low power license upon completion
15 of construction. To that end, Applicants anticipate moving in
16 due course pursuant to 10 C.F.R. § 50.57(c) for a fuel loading
17 and low power license. Applicants do not consider that such a
18 motion, or the prospect of such a motion, has any effect on the
19 review, discovery, or hearing schedule pertaining to the seismic
20 and geologic contention.

21 III.

22 INTERVENORS CAN COMPLETE NECESSARY DISCOVERY 23 ON GEOLOGY AND SEISMOLOGY BY SEPTEMBER 30, 1980.

24 Applicants submit that the discovery timetable with
25 respect to the stated seismic and geologic contention should be
26 as follows:

- 27 (1) All discovery requests must be initiated
28 by September 30, 1980.

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1 (2) In the event either the NRC Staff's
2 Safety Evaluation Report or the Advisory
3 Committee on Reactor Safeguards' letter should
4 disclose subjects for discovery that were
5 previously unknown to FOE and GUARD and could
6 not reasonably have become known to said
7 intervenors prior to September 30, 1980, an
8 additional 30 days from issuance of said
9 report should be allowed for discovery with
10 respect to such newly revealed items.

11
12 FOE has requested that it be allowed open discovery on
13 the seismic and geologic contention:

14 "...until thirty days after the A.C.R.S. has
15 accepted and approved the final staff supplement to
16 the Staff S.E.R. contained in the final A.C.R.S.
17 letter to the A.S.L.B. and the N.R.C. FOE
Memorandum, at p. 8.

18 FOE's request should not be granted as written for the
19 reason that the precise series of events contemplated by FOE may
20 not occur. Applicants interpret the language to mean FOE
21 requests open discovery until 30 days after NRC Staff and the
22 Advisory Committee on Reactor Safeguards (hereafter "ACRS") have
23 issued their "final" reports. Applicants do not believe
24 unlimited discovery should remain open for such an extended
25 period.

26 In support of their proposed schedule, FOE submitted a
27 lengthy discussion of certain of their seismic and geologic
28 concerns. See FOE Memorandum, pp. 2-8. Two points are clear
from the FOE Memorandum: first, FOE's approach is one of delay;

1 and second, FOE has more than sufficient information and
2 understanding of the seismic concerns at San Onofre to engage in
3 productive, intelligent discovery.

4 Applicants most certainly deny the many substantive
5 conclusions contained in the FOE Memorandum. However, the
6 discussion therein reflects that FOE has attended relevant
7 meetings between Applicants and NRC Staff and are well aware of
8 the current review issues pending between Applicants and NRC
9 Staff. The FOE Memorandum also reveals that FOE has access to
10 expert advice and guidance that will allow relevant discovery.

11 It is FOE's responsibility to prepare its case on the
12 issues of concern to it and on which it was granted
13 intervention. Consumers Power Company (Midland, Units 1 and 2),
14 ALAB-123, 6 AEC 331, 332 (1973). FOE has had over two and one-
15 half years within which to pursue discovery and become familiar
16 with NRC licensing procedures. Applicants do not consider a
17 close of discovery as of September 30, 1980 to be a "quick close
18 off of discovery." To the contrary, FOE has had and will have
19 ample opportunity to discover relevant evidence. FOE is not a
20 reviewer of the NRC Staff, ACRS, and Applicants, but is an
21 independent party charged with the responsibility of developing
22 its own case in a timely manner.

23 FOE appears to argue that it should have a timetable
24 based on events that have occurred at Diablo Canyon. The
25 procedures for Diablo Canyon are irrelevant to this proceeding.
26 This docket must proceed at its own pace.

27 FOE's allusion to and reliance on events at Diablo
28 Canyon is misplaced. FOE's discussions of the science of

1 seismology as an infant science is likewise wide of the mark.
2 There is no dispute that there is more to learn concerning
3 geology and seismology both generally and in Southern California
4 and that knowledge of the science is growing. The state of the
5 science is such that decisions can and should be made based on
6 current knowledge.

7 The discussions between the NRC Staff and Applicants to
8 which FOE refers reflect that new information is constantly
9 sought and will be considered by both NRC Staff and Applicants in
10 licensing SONGS. The recent event obviously relevant to this
11 proceeding is the Imperial Valley earthquake of 1979. Applicants
12 have studied data from that event and have submitted a review of
13 that data as it relates to SONGS, including the subject of
14 vertical ground accelerations. FOE is aware of these events and,
15 if it is of interest to them, should be engaging in whatever
16 discovery they believe necessary. FOE cannot expect to await all
17 final reports on this item before commencing discovery. FOE
18 appears concerned about NRC Staff progress in issuing its Safety
19 Evaluation Report by October 1, 1980. The state of preparation
20 of the Safety Evaluation Report is irrelevant to the question of
21 whether FOE can be engaging in discovery now. Preparation of the
22 Safety Evaluation Report does not prevent FOE from completing its
23 discovery.

24 FOE also alludes to a potential relationship between
25 the Cristianitos fault and the Offshore Zone of Deformation.
26 Again, FOE obviously knows of the issue and that Applicants do
27 not consider any such relationship exists. The issue is not new
28 and there is no reason why FOE cannot complete its discovery.

1 Applicants submit that FOE is knowledgeable of the
2 geologic and seismic issues at SONGS and is in position to
3 promptly complete discovery concerning such issues. It should be
4 noted, that Applicants specifically admit that if the Safety
5 Evaluation Report or the ACRS's letter reveals new concerns or
6 concerns of which FOE could not be aware as a result of a
7 diligent review, they should have an additional 30 days after
8 issuance of such report to commence discovery on such newly
9 discovered items. It is Applicants' purpose to require FOE and
10 GUARD to move forward on discovery on issues of current concern
11 and not to await some last minute rush once all other parties
12 have completed their reviews. New items revealed at a later date
13 must be handled fairly to afford due process at that time.

14 Applicants submit that Intervenors FOE and GUARD should
15 be required to initiate all discovery requests on the
16 Geology/Seismology issue on or before September 30, 1980. The
17 exception to this requirement should be that in the event items
18 are disclosed for the first time in the Safety Evaluation Report
19 or by the letter of the Advisory Committee on Reactor Safeguards,
20 that were previously unknown to Intervenors and could not
21 reasonably have become known to Intervenors, an additional 30
22 days from issuance of said reports, should be allowed for
23 discovery on such newly revealed items.

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2 IV.
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4 DISCOVERY ON ESCALATION OF URANIUM PRICES AND
5 EFFECTS OF DEWATERING WELL CAVITIES SHOULD
6 TERMINATE 30 DAYS AFTER THE BOARD RULING
7 ON PENDING MOTIONS FOR SUMMARY DISPOSITION.

8 This Board has before it Applicants' "Motion for
9 Summary Disposition of Intervenor Friends of the Earth, et al.'s
10 Contentions 1a (Dewatering Wells) and 9 (Uranium Fuel Costs)".
11 As of this date, the responses to that motion have not been
12 filed. Applicants are hopeful that the motion will be granted
13 and the issues terminated. However, in order to avoid
14 unnecessary procedural activity, Applicants suggest a timetable
15 for discovery on those issues assuming denial of the motion as to
16 one or both issues. It is clear from that motion that the issues
17 are ripe for decision and that even if either or both must be
18 tried, they are subject to discovery at this time.

19 Applicants suggest that in the event either or both
20 issues are not disposed of by the motion for summary disposition,
21 that discovery close as to either or both such issues 30 days
22 after this Board's order denying any portion of said motion for
23 summary disposition.

24 V.
25

26 DISCOVERY SCHEDULE FOR
27 EMERGENCY PLANNING .

28 Applicants have today received the Board's "Memorandum
and Order on Prehearing Conference of July 17, 1980", dated
August 6, 1980. This is to advise the Board and all parties that
Applicants intend to address, as allowed by that Order, on a

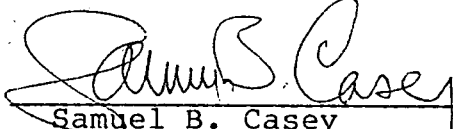
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1 before August 21, 1980, the question of closing discovery on the
2 emergency planning issue.

3 DATED: August 11, 1980

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11 By 
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PROOF OF SERVICE BY MAIL

I declare that:

I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action; my business address is Three Embarcadero Center, Suite 2300, San Francisco, California 94111.

On August 11, 1980, I served the attached "Applicants' Brief re Appropriate Discovery Timetable" on the following in said cause, by placing a true copy thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States mail at San Francisco addressed as follows:

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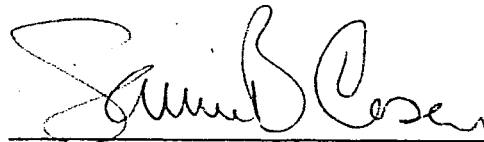
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